

Understanding Executive Orders: Presidential Power and the Legal Response

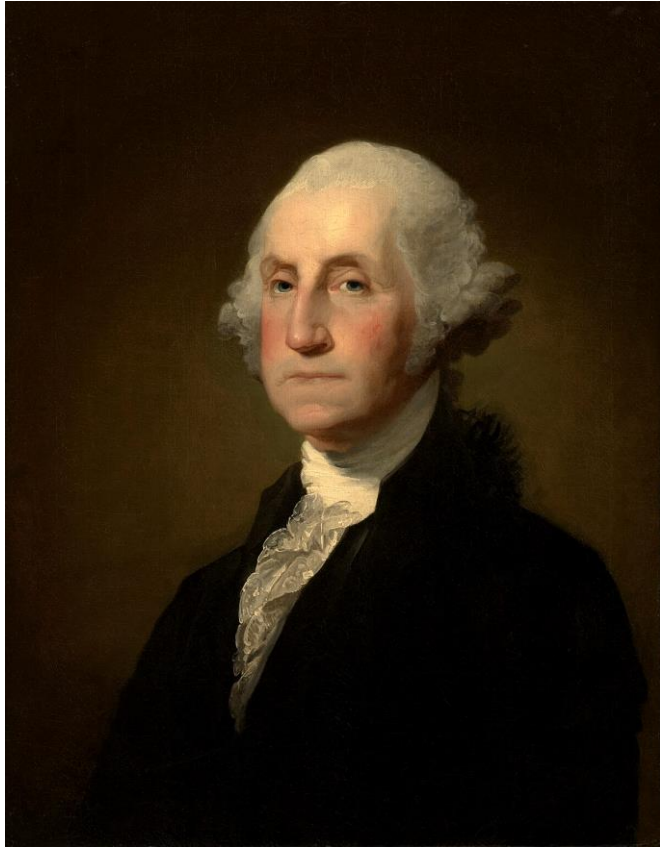
Hennepin County Law Library CLE Series

Jim Hilbert
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| President | First day | First week | First 100 days |
|---|-----------|------------|----------------|
| Donald Trump <i>Current</i> | 26 | 36 | 130 |
| Joe Biden <i>2021 - 2025</i> | 9 | 22 | 42 |
| Donald Trump <i>2017 - 2021</i> | 1 | 4 | 33 |
| Barack Obama <i>2009 - 2017</i> | | 5 | 19 |
| George W. Bush <i>2001 - 2009</i> | | | 12 |
| Bill Clinton <i>1993 - 2001</i> | 1 | 2 | 13 |
| George H.W. Bush <i>1989 - 1993</i> | | 1 | 11 |
| Ronald Reagan <i>1981 - 1989</i> | | | 18 |
| Jimmy Carter <i>1977 - 1981</i> | | 1 | 16 |

The Very First “Executive Orders”



1. Instruction to the Federal Department Heads
(June 8, 1789)
2. Proclamation of Neutrality
(April 22, 1793)

Executive Power During Crisis



1. Civil War Actions
(Spring of 1861)
2. Emancipation
Proclamation
(January 1, 1863)

Coordinated Abuse of Power



1. Taking Over Radio Stations
(April 6, 1917)
2. Committee on Public
Information
(April 13, 1917)

The Modern Era – Disputed Power



1. New Deal / Great Depression (1933-36)
2. Japanese American Internment (February 19, 1942)

Other Historical Examples

1. Desegregation of the armed forces (Truman 1948)
2. Seizure of steel mills (Truman 1952)
3. Troops to enforce desegregation (Eisenhower 1957)
4. Affirmative action for contractors (Johnson 1965)
5. DACA (Obama 2012)

Recent Trends – Expansion

Trump First Term

1. Travel ban (2017)
2. Border wall funding (2019)
3. COVID (2020)

Biden

1. Recission of Trump orders (2021)
2. Climate crisis permitting (2021)
3. Student loan forgiveness (2022)

Trump II Executive Orders

Most Legally Supportable

1. Declassification of JFK assassination records (pursuant to Kennedy Assassination Records Collection Act of 1992)
2. Return to the office mandate (pursuant to presidential power to manage Executive Branch workforce)
3. Revocation of Syria sanctions (inherent presidential powers on matters of national security and foreign relations)

Trump II Executive Orders

In Most Legal Jeopardy

1. Attacks on Law Firms (EOs “Addressing Risks from [insert law firm name]”)
2. Sanctuary City Funding (EO 14159 “Protecting the American People Against Invasion”)
3. Birthright Citizenship (EO 14160: “Protecting the Meaning and Value of American Citizenship”)
4. Tariffs (EO 14257: “[Liberation Day]”)

General Considerations

1. Expansive and Aggressive Use of Executive Power
2. Congressional Paralysis and Erosion of Legislative Power
3. Judicial Pushback—But Also Judicial Enablement
4. Growing Use of the “Shadow Docket”